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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,296	10/31/2001	Thomas D. Benson	10004991 -1	8164

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HEWLETT-PACKARD COMPANY  
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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT PAPER NUMBER

3627

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/004,296

**Applicant(s)**

BENSON

**Examiner**

Joseph A. Fischetti

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-29 is/are pending in the application.
- 4a) Of the above claim(s) 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Election/Restrictions***

Newly submitted claims 25-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 21-24 are drawn to a subcombination covering a single confirmation step in combination with a feedback re-determining quantity step whereas claims<sup>29 are</sup> 25 is drawn to a dual confirmation request step method in combination with a single step quantity determination step. As such, the claims are subcombinations usable together. Notwithstanding, on 1/30/04 applicant elected claims 8-14 which were drawn to the embodiment of receiving a single confirmation message from the supplier, which claim limitation is only embodied in claim 21, but is not embodied in claim 25. Claim 21 is not generic to claim 25 because claim 25 covers the limitation of an additional confirmation order request which is not included in the language of claim 21 covering only "a means for ...receiving from at least one supplier a confirmation".

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the term "performance" is being used. The term connotes use of quality or standards but nothing has been recited to quantify this term.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21,22,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Graves et al.

Graves et al. disclose code which processes a processor operable to determine a required quantity of material (processing unit 106); a means for communicating with at least one supplier of said material ( voice card, modem interface or facsimile col. 7 lines 1-15), wherein said communication includes conveying to said at least one supplier said quantity and a time frame ( col. 6 lines 53-55 purchase order releases are scheduled) and receiving from said at least one supplier a confirmation ( col. 7. lines 7-10, supplier confirms shipments); computer readable code processed by said processor (106), wherein said code is operable to re-determine said required quantity using feedback relating to a performance of at least one supply chain

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participant (the one supply chain participant is read as the customer and its "performance" is read the functioning of the facility which as a result draws down on the tank supply see col. 17, lines 28-37 for feedback feature) .

RE claim 22. see col. 17 lines 28-30 for disclosure of the feedback includes a comparison between an actual run rate and a corresponding anticipated run rate.

Re claim 24: see col. 17 lines 30-31, discloses is a product forecast.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al (H1743) in view of Gung et al.

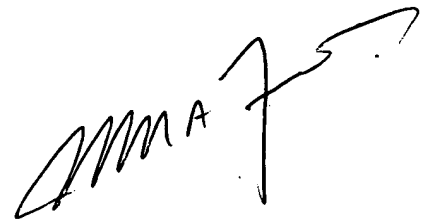
As set forth above, Graves et al. discloses the subject matter of claims 22,23, and 24, but applicant challenges the use of performance in Graves et al. as a standard for forecasting supply. However, Gung et al. in col. 3 lines 16-19 discloses forecasting demand based upon performance. It would be obvious to modify the Graves to use a performance factor to determine supply forecasting because factors, such as, transportation reliability, and raw material availability would be considered. Such raw

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material availability (production yield) would be an obvious standard for comparison in the feedback system because the motivation for this would be a basic standard which need to be met (re: claim 24).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.

A handwritten signature in black ink, appearing to read 'J. A. Fischetti', with a stylized flourish at the end.